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BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			EXAMINER MEINECKE DIAZ, SUSANNA M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/681,784
Filing Date: June 05, 2001
Appellant(s): SKETCH, EDWARD ALUN

Benjamin C. Stasa (Reg. No. 55,644)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 14, 2006 appealing from the Office action mailed December 1, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,591,246

TUTTLE

7-2003

Saba Software web page from 6/21/2000: "Saba Learning Network, Enterprise Series."

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Burriesci, J. "It's All About The Knowledge" Intelligent Enterprise, August 24, 1999,
pages 10 and 12.

"Red Hat To Offer Saba Learning To Meet Global Training Needs" Business Wire, July
24, 2000.

Khirallah, D.R. "Veterans Agency Turns To Online Training" Information Week, March
27, 2000, page 83.

Saba Software web page from 6/7/2000: "Saba Competency Content Alliance."

Saba Software web page from 5/10/2000: "Saba Learning Exchange."

Rice, D. "Hyundai Revs Training With Saba" IT Support News, June 2000, pages 18
and 20.

Rice, D. "techies.com Signs On With Saba" IT Support News, August 2000, page 22.

"CommonPlaces, in Agreement with Reuters Health Information, to Offer Free Access
to Health News Via CollegeBytes.com." Business Wire, April 21, 1999.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 13, 15-16, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saba Software Learning Management System from 1997-2000 aspects of which are evidenced by the following references:

- I. Saba Software web page from 6/21/2000: "Saba Learning Network, Enterprise Series"; hereafter referred to as Reference A.
- II. Burriesci, J. "It's All About The Knowledge" Intelligent Enterprise, August 24, 1999, pages 10 and 12; hereafter referred to as Reference B.
- III. "Red Hat To Offer Saba Learning To Meet Global Training Needs" Business Wire, July 24, 2000; hereafter referred to as Reference C.
- IV. Khirallah, D.R. "Veterans Agency Turns To Online Training" Information Week, March 27, 2000, page 83; hereafter referred to as Reference D.
- V. Saba Software web page from 6/7/2000: "Saba Competency Content Alliance"; hereafter referred to as Reference E.
- VI. Saba Software web page from 5/10/2000: "Saba Learning Exchange"; hereafter referred to as Reference F.
- VII. Rice, D. "Hyundai Revs Training With Saba" IT Support News, June 2000, pages 18 and 20; hereafter referred to as Reference G.
- VIII. Rice, D. "techies.com Signs On With Saba" IT Support News, August 2000, page 22; hereafter referred to as Reference H.

Regarding claims 1-2, 15, 18, 20, Saba Software teaches a learning management system comprising:

- Defining and/ or receiving input regarding an employment function and preferred method of learning. Reference A, lines 8-9 teaches learners have a role (employment function) that they define when targeting knowledge profiles and assessing their knowledge. Reference B, page 10, column 1, line 34 to column 2, line 7 teaches that the content can be in different formats and uses profiling to tailor lessons to learning styles. Reference C, line 12 teaches that the learner sets up a profile in the system.
- Assessing functional competency based on the employment function via an online self-assessment. Reference A, lines 8-9 teaches learners have a role (employment function) that they define when targeting knowledge profiles and assessing their knowledge. Reference D, column 3, lines 6-8 teaches skills assessment tests online.
- Identifying gap(s) between an assessed functional competency and a predefined competency required for the employment function. Reference A, lines 1-5 and 8 teaches a comprehensive application that measures and closes critical knowledge gaps for individuals and groups by targeting required knowledge for their role. Reference E, lines 4-6 teaches a competency gap analysis that focuses education efforts. Reference D, column 1, lines 43-47 teaches tests and skills analysis to measure knowledge gaps needed for a particular job.

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Reference C, lines 13-14 teaches establishing a user profile, identify gaps, and obtain the appropriate learning.

- Querying a database of available learning solutions to locate a learning solution that (i) is currently a best-in-class learning solution for reducing the at least one competency gap, and (ii) best matches the employee's preferred method of learning. Reference A, lines 21-22. Reference B, page 10, column 1, line 34 to column 2, line 7 teaches that the content can be in different formats and uses profiling to tailor lessons to learning styles.
- Automatically defining a development plan for the employee including learning solution identified with the query. Reference A, lines 21-22. Reference B, page 10, column 1, line 34 to column 2, line 7 teaches that the content can be in different formats and uses profiling to tailor lessons to learning styles.
- Identifying at least one learning solution that is in accordance with the preferred method of learning. Reference B, page 10, column 1 line 34 to column 2, line 7 teaches content can be in different formats and collaborative profiling tailors lessons to individual learning styles and preferences.

Regarding claims 1, 15, and 20, while Saba Software queries a database of available learning solutions to locate a learning solution that (i) is currently a best-in-class learning solution for reducing the at least one competency gap, and (ii) best matches the employee's preferred method of learning (e.g., finds available training opportunities via a Web-based environment), Saba Software does not expressly teach

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that the querying is dynamic *per se*. However, Official Notice is taken that it old and well-known in the art of database management to dynamically query databases in order to improve the likelihood of one having access to the most up-to-date information available. Since Saba Software is marketing its service to the public and boasts the ability to “quickly find best-of-breed learning offerings to close knowledge gaps” (Reference A, lines 21-22), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to modify Saba Software to *dynamically* query a database of available learning solutions to locate a learning solution that (i) is currently a best-in-class learning solution for reducing the at least one competency gap, and (ii) best matches the employee’s preferred method of learning in order to improve the likelihood of one having access to the most up-to-date information available, thereby increasing customer satisfaction with Saba Software.

As per claim 2, Saba Software does not expressly teach that “the at least one learning solution comprises classroom, software, online and on-the-job training learning activities.” Official notice is taken that it is old and well-known in the art at the time of invention that learning solutions may comprise many different methods including: classroom, software, online, and on-the-job training activities. It would be obvious to one of ordinary skill in the art to modify Saba Software to offer multiple learning methods for the advantage of efficiency of training.

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Regarding claims 3-7, Saba Software teaches a learning management system comprising:

- Evaluating a learning solution (Reference F, lines 9-10... teaches sharing of impressions about learning solutions and reading reviews from others) and posting these evaluations online for others to review interactively (Reference F, lines 7-10... teaches chatting and sharing ideas online with other learners about different learning offerings) after completion of a learning activity.
- Evaluating best practices for implementing a learning solution and identifying implementation roadblocks after completion of a learning activity (Reference F, lines 7-10... teaches chatting and sharing ideas online about different learning offerings and read reviews (positive aspects, difficulties, obstacles) of learning solutions).

Regarding claim 16, Saba Software teaches a learning management system comprising:

- A configuration to receive input defining interactive assessment content (Reference F, lines 7-10... teaches sharing of impressions about learning solutions and reading reviews from others).
- A configuration to receive input defining learning solution content (Reference F, lines 1-4... teaches a global network to find learning offerings listed by industry, role, certification, and competency).

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- A configuration to receive input defining competency level requirements for the employment function(s) (Reference E, lines 4-6... teaches integrating competency libraries for gap analyses and to focus education efforts).

Regarding claims 8-9, 13, Saba Software teaches a learning management system comprising:

- Completing online testing to assess knowledge transfer. Reference C, lines 13-14 teaches all courses and progress will be tracked, and there will be pre-and post-gap analysis assessments.
- Mining/ searching evaluation data to identify and make learning solution improvements. Reference C, lines 13-14 teaches tracking and performing assessments to plan and deploy future course offerings.
- Assessing functional competency for an employment function other than an employee's current function. Reference H, page 23, column 1, lines 42-49 teaches the ability to compare own skills to other in-demand jobs, see what gaps exist and recommend learning.

Claims 10, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saba Software as applied to claims 1-10, and 13 and in further view of Collegebytes.com (1999), as disclosed in "CommonPlaces, in Agreement with Reuters Health Information, to Offer Free Access to Health News Via CollegeBytes.com."

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Regarding claims 10, 17, and 19, Saba Software teaches a learning management system that allows for the assessment of participants and their function, the ability to create a gap analysis, and a set of learning solutions to close the gap identified. Saba's systems comprises the ability to:

- Mine by employment function, competency assessment, competency gap, and evaluation data. Reference A, lines 1-3, 14, 15, and 17 teaches targeting required knowledge profiles for role(s) (employment functions) within a group or an individual, assessing knowledge gap(s), and tracking (searching) results for the group or individual(s).

Saba Software's learning management system does not expressly teach:

- Acquiring or selling learning solutions in an online auction format.

Collegebytes.com (1999) teaches a computer-based system that sells textbooks via an online auction format. Collegebytes.com and Saba Software are in the analogous art of providing products and services to students. It would be obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Saba Software and collegebytes.com to create a system and method to sell learning solutions via an online auction format for the advantages of an efficient marketplace.

Additionally, it should be noted that the learning solutions that are acquired or sold in an online auction format (in claim 10, for example) are not necessarily the same learning solutions queried in the independent claim (claim 1, for example).

Collegebytes.com provides comprehensive services for people attaining an education,

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including online auction capabilities for items that are needed to complete one's education, such as textbooks (lines 17-24 of "CommonPlaces..."). Textbooks are part of a learning solution since they are used to facilitate education in their respective subjects. Furthermore, the ability to auction off learning solutions does not affect the competency assessment aspects of the claims; therefore, such an auctioning service is effectively a value added service that enhances the experience of a user by allowing him/her to quickly and conveniently plan as much of his/her learning experience as possibly in a single interface or environment. This is why, for example, CollegeBytes.com was being created into "the pre-eminent full-service Internet Hub for the college market -- providing a self-evolving, personalized community with academic tools, campus-based content, integrated commerce and lifestyle services" (lines 18-19 of "CommonPlaces..."). In other words, the Saba Software-CollegeBytes.com combination provides the benefit of a more efficient marketplace for taking advantage of learning-related services (as asserted above).

Claims 11-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saba Software as applied to claims 1-10, and 13 and in further view of Tuttle (U.S. Patent 6,591,246)

Regarding claims 11-12 and 14, Saba Software teaches a learning management system that allows for the assessment of participants and their functional competencies, the ability to create a gap analysis, and a set of learning solutions to close functional competency gaps identified.

Saba Software's learning management system does not expressly teach:

- Mining online assessment data to identify preferred functional competencies for new employees.
- Mining/ searching online assessment data to select current employees for employment opportunities.
- Mining assessment data to select groups of employees for functional competencies necessary to perform a group-orientated task.

Tuttle teaches a computer-based system that creates a database of assessments and analyses of skills of the workforce that can be analyzed to determine capability gaps that can be used in recruiting and training decisions. The system comprises:

- Mining online assessment data to identify preferred functional competencies for new employees (column 1, lines 5-11).
- Mining/ searching online assessment data to select current employees for employment opportunities (column 1, lines 29-32).
- Mining assessment data to select groups of employees for functional competencies necessary to perform a group-orientated task (column 1, lines 43-46).

Saba Software and Tuttle are analogous arts in the field of employee/ workforce capability assessment and improvement. It would be obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Saba and Tuttle to enable a system that could assess the capabilities of their employees and identify individual or groups of employees to be selected for employment opportunities and tasks for the advantage of convenience in a single system.

Additionally, Saba Software helps to identify knowledge gaps for groups and individuals. Similarly, Tuttle mines employee data records to identify knowledge and skill gaps (as explained above). Tuttle further enhances the ability of Saba Software to evaluate such gaps; therefore, the combination of both approaches to identify such gaps yields more effective and accurate pinpointing of where these gaps lie and it does so conveniently in a single system (as asserted above).

(10) Response to Argument

Regarding the combination of references A and B, Appellant broadly asserts that the "Examiner fails to establish a *prima facie* case that 'it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Saba Software to *dynamically* query a database of available learning solutions...." (Page 5 of the Appeal Brief) This argument is not understood because references A and B both describe features of Saba Software Learning Management System. In other words, references A and B support Examiner's § 103(a) rejection over a product, i.e., Saba

Software Learning Management System. Therefore, Examiner does not need to provide motivation for combining Reference A with Reference B.

Regarding claims 2-14 and 16-19, Appellant asserts that these claims are allowable for the same reasons as those presented in relation to claims 1 and 15 (page 6 of the Appeal Brief). The Examiner's response from above applies to claims 2-14 and 16-19 as well.

Regarding claims 10, 17, and 19, Appellant argues that there is no motivation to combine Saba Software with Collegebytes.com (page 6 of the Appeal Brief). The Examiner respectfully disagrees. First, it should be noted that the learning solutions that are acquired or sold in an online auction format (in claim 10, for example) are not necessarily the same learning solutions queried in the independent claim (claim 1, for example). Collegebytes.com provides comprehensive services for people attaining an education, including online auction capabilities for items that are needed to complete one's education, such as textbooks (lines 17-24 of "CommonPlaces..."). Textbooks are part of a learning solution since they are used to facilitate education in their respective subjects. Furthermore, the ability to auction off learning solutions does not affect the competency assessment aspects of the claims; therefore, such an auctioning service is effectively a value added service that enhances the experience of a user by allowing him/her to quickly and conveniently plan as much of his/her learning experience as possibly in a single interface or environment. This is why, for example, CollegeBytes.com was being created into "the pre-eminent full-service Internet Hub for the college market -- providing a self-evolving, personalized community with academic

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tools, campus-based content, integrated commerce and lifestyle services" (lines 18-19 of "CommonPlaces..."). In other words, the Saba Software-CollegeBytes.com combination provides the benefit of a more efficient marketplace for taking advantage of learning-related services (as asserted in the art rejection). [Please note that this explanation has been incorporated into the art rejection in order to further clarify Examiner's previously established and currently maintained position.]

Regarding claims 11, 12, and 14, Appellant argues that there is no motivation to combine Saba Software with Tuttle (page 6 of the Appeal Brief). The Examiner respectfully disagrees. Saba Software helps to identify knowledge gaps for groups and individuals. Similarly, Tuttle mines employee data records to identify knowledge and skill gaps (as explained in the art rejection). Tuttle further enhances the ability of Saba Software to evaluate such gaps; therefore, the combination of both approaches to identify such gaps yields more effective and accurate pinpointing of where these gaps lie and it does so conveniently in a single system (as asserted in the art rejection). [Please note that this explanation has been incorporated into the art rejection in order to further clarify Examiner's previously established and currently maintained position.]

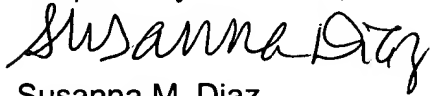
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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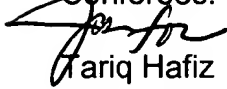
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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